its aid would suffer irreparable injury. *Ex parte Bryan,* 44 Ala. 402. But what would be an irreparable injury is a question for each case and can hardly be fixed by definite rule. S. H. M.

CROSS-REMAINDERS ARISING FROM DEVISE TO TWO "DURING THEIR LIVES."—The Supreme Court of Mississippi has recently passed upon an interesting question as to the effect of the terms "during their lives," and "at their death" in a devise. A testatrix devised certain real estate to "J. C. and L. C. for and during their natural lives and at their death to go to the heirs of their bodies." By codicil it was directed that "in the event of a failure of issue by the said L. C. and J. C. that on their death all property bequeathed to them" should go to certain nephews. J. C. died under age and unmarried. The nephews, ultimate remainder-men, claimed the share of J. C. by virtue of the remainder limited to them, but the court held that the nephews were entitled to nothing until the death of both J. C. and L. C. without issue, and that L. C. succeeded to all the rights of J. C. by virtue of an implied cross-remainder. *Henry* v. *Henderson,* 60 So. 33.

Cross-remainders are defined as "remainders limited after particular estates to two or more persons, in several parcels of land, or in several undivided shares in the same parcel of land, in such way that on the determination of the particular estates in any of the several parcels or undivided shares, they remain over to the other grantees (or devisees) and the reversioner or ulterior remainder-man is not let in until the determination of all the particular estates." 1 PRESTON, ESTATES 94. Such remainders are never implied in deeds but may be so in wills. This theory of cross-remainders may become applicable in any one of three general situations. UNDERHILL, WILLS, 1281-1284. THEOBALD gives eight, but they are merely variations of these three. THEOBALD, WILLS, 571.

The first general situation embraces those cases in which an estate is given in fee tail to two or more as tenants in common, and is limited over in remainder on the death of either, both, or all, without issue, as the case may be. The theory originated with this class of cases at common law. The reason for the application was that, unless a cross-remainder could be implied, on the death of any one of the tenants in tail without issue, an intestacy would result as to his share from the time of his death down to the death of the last survivor without issue. UNDERHILL, WILLS, 1281. To prevent this possibility cross-remainders between the tenants in tail were implied. *Holmes* v. *Meynel,* 25 Eng. R. Cas. 697; *Hannaford* v. *Hannaford,* L. R. 7, Q. B. 116; *Wright* v. *Holford,* 1 Cowp. 31; *Phipard* v. *Mansfield,* 2 Cowp. 797; *Watson* v. *Foxon,* 2 East 36; *Powell* v. *Howells,* L. R. 3 Q. B. 653; *Doe* v. *Webb,* 25 Eng. R. Cas. 702; *Halsey* v. *Gee,* 79 Miss. 193; *Banking Co.* v. *Field,* 84 Miss. 646.

The second general situation arises in cases in which an absolute devise is made, either of a fee in land or of personal property, to two or more as tenants in common, with a limitation over on the sole condition that all die without issue. The English rule in such cases is *not* to imply cross-remainders. *Skey* v. *Barnes,* 3 Meriv. 334; *Baxter* v. *Losh,* 14 Beav. 612. UN-

DERHILL, WILLS, 1281, states that the same rule is applied in America as in similar devises to two or more in tail. It will be noted, however, that, in the following cases, some of the courts regarded the particular estates before them as entailed estates. *Allen* v. *Trustees,* 102 Mass. 262; *Hoxton* v. *Archer,* 3 G. & J. (Md.) 199; *Pierce* v. *Hakes,* 23 Pa. 231; *Lillibridge* v. *Adie,* Fed. Cas. No. 8,350; *Seabrook* v. *Mikell,* Cheves Equity (S. C.) 80.

The third general situation occurs in cases where property is devised to two or more "during their lives" with a limitation over "after their death" (or similar phrases) without issue, heirs, children, etc. A variety of rules arise from these cases. Where the devise is for two for life, with a limitation over after the death of both, it is generally decided that the limitation over is not effective on the death of the first, but on the death of both, *i. e.,* a cross-remainder is implied. *Glover* v. *Stillson,,* 56 Conn. 316; *Smith* v. *Usher,* 108 Ga. 231; *Dow* v. *Doyle,* 103 Mass. 489. See also *Halsey* v. *Gee* and *Banking Co.* v. *Field, supra.* It is held, however, that the word "both" is not essential to the implication of a cross-remainder in such a case. *Baldrick* v. *White,* 2 Bail. (S. C.) 442. When the devisees for life are husband and wife, the limitation over "at their death" is held not to take effect until the death of both, irrespective of the question of estates by entireties. *Jacobs* v. *Bradley,* 36 Conn. 365; *Merrill* v. *Bickford,* 65 Me. 118; *Douglas* v. *Parsons,* 22 Oh. 526. When a devise is given to two for life, not husband and wife, with a limitation over at their death to their children, with or without a limitation over in default of children, and one of the life tenants dies leaving children, cross-remainders will not be implied in favor of the surviving tenants, but the deceased's share goes to his children. *Dunn* v. *Bryan,* 38 Ga. 144; *Monarque* v. *Monarque,* 80 N. Y. 320; *Glasscock* v. *Tate,* 107 Tenn. 486; *App. of Pa. Co.,* 115 Pa. St. 514, 10 Atl. 130; *In re Browning,* 16 R. I. 441, 3 L. R. A. 209; ROOD, WILLS, § 597. In England the fact that the remainder-men are children of the life tenants does not seem to prevent the whole estate of the deceased life tenant from passing to the surviving life tenant or tenants. *Pearse* v. *Edmeades,* 3 Y. & C. Exch. 246. When the device is to two or more for life, then over at their death, three cases at least hold that the share of the one first dying passes to her representatives and remains in them until the death of all the life tenants, at which time it finally goes over. *Cheney* v. *Teese,* 108 Ill. 473; *Bulkley* v. *Bulkley,* 1 Root (Conn.) 78; *Hawkins* v. *Hawkins,* 72 Miss. 749. When the estate is personalty there must be an immediate division, on the death of either or any of the life tenants, as to his share. *Wooten* v. *Wooten's Exr's.* 2 Pat. & H. (Va.) 494. The interpretation of a devise of the sort here under discussion has often arisen in connection with American statutes abolishing joint tenancy or survivorship. Although Pennsylvania has a statute abolishing survivorship, yet its court has held that a devise to two and "after their death" over to another, results in a clear implication that a survivorship was intended. *Jones* v. *Cable,* 114 Pa. 586; *Kerr* v. *Vernon,* 66 Pa. 326; *Lentz* v. *Lentz,* 2 Phila. 117. Where distributive words, such as "share and share alike," were annexed to the phrase "at their death" the contrary was held. *Seeley* v. *Seeley,* 44 Pa. 434; *Cockin's App.,* 111 Pa. 26. Under a similar statute in

West Virginia the latter court reached, in *Lazier* v. *Lazier,* 35 W. Va. 567, a holding like that in *Jones* v. *Cable, supra.* Under a similar statute Alabama held *contra* to *Jones* v. *Cable. Gindrat* v *W. Ry. of Ala.,* 96 Ala. 162, 19 L. R. A. 839. Under the statute of New York abolishing joint tenancies, unless expressly created, the court has held that a devise to two "during their lives" and over "at their death" does not create a joint tenancy within the requirement of the statute. *Gage* v. *Gage,* 112 N. Y. 667, 43 Hun. 501; *Campbell* v. *Rawdon,* 18 N. Y. 412. But where a sufficient intent is present the same court is not averse to holding that the whole estate goes to survivors by virtue of a cross-remainder upon the death of one of the life tenants. *Purdy* v. *Hayt,* 92 N. Y. 446; *Graham* v. *Graham,* 97 N. Y. S. 777; *Dana* v. *Murray,* 122 N. Y. 604. The case of *Gage* v. *Gage, supra,* is in square conflict with the principal case herein on the question of cross-remainders. Under a similar statute in Illinois, such a devise is held not to create a joint tenancy. *Cheney* v. *Teese,* 108 Ill. 473. Without reference to its statute on joint tenancy, Massachusetts has held, in *Loring* v. *Coolidge,* 99 Mass. 191, that a direction to pay an income to two persons "during their lives" and "at their death" over to certain third persons, required payment of the whole to the survivor on the death of one of the devisees for life, following *Pearse* v. *Edmeades, supra.*

Aside from any of the three general classes of situations above noted, the implication or non-implication of cross-remainders is mainly a question of intention. One case requires a clear intention to be present. *Hungerford* v. *Anderson,* 4 Day (Conn.) 368. Where a grant is made to two or more for life or in tail, with remainder over at their death without issue, etc., and it appears that the testator intended the property to go over to the remainder-men *en masse,* a cross-remainder will be implied until such time as the whole can go over. *Doe* v. *Webb,* 25 Eng. R. Cas. 702; *Maden* v. *Taylor,* 45 L. J. Ch. 569; *Dana* v. *Murray,* 122 N. Y. 604; *Skey* v. *Barnes,* 3 Meriv. 334; *Lazier* v. *Lazier,* 35 W. Va. 567; *Lentz* v. *Lentz,* 2 Phila. 117. Formerly it was held that no cross-remainders could be implied where there were more than two primary devisees. *Pery* v. *White,* 2 Cowp. 777. Now, it makes no difference how many primary devisees there may be in the particular case. *Phipard* v. *Mansfield,* 2 Cowp. 797; *Livesey* v. *Harding,* 1 Russ. & Mylne 636; *Hall* v. *Priest,* 6 Gray 18; *Hoxton* v. *Archer,* 3 G. & J. (Md.) 199; *Wall* v. *McGuire,* 24 Pa. 248. When there are only two primary devisees, and then a remainder over, the presumption is in favor of implying a cross-remainder between them; whereas, if there are more than two primary devisees, the presumption is against the implication. *Phipard* v. *Mansfield, supra.* Further, where there are only two primary devisees, no expressed intent is required to take cross-remainders between them. *Lindsay* v. *Harding, supra.* Modern cases favor cross-remainders in order to carry out the intention of the testator. *Seabrook* v. *Mikell,* Cheves Eq. (S. C.) 80. G. A. C.